

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA K GIPSON
Claimant

WALMART INC
Employer

APPEAL 19A-UI-01874-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/03/19
Claimant: Respondent (2R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the February 22, 2019, (reference 03) unemployment insurance decision that allowed benefits based upon a determination that claimant is still employed part-time or working on-call whenever work is available and is considered able to and available for work. The parties were properly notified of the hearing. A telephonic hearing was held on March 18, 2019. The claimant, Joshua K. Gipson, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, WalMart, Inc., participated through Monica Snyder, Asset Protection Manager. The administrative law judge took official notice of the administrative record.

ISSUE:

Does the claimant meet the definition of being considered partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a self-checkout host, beginning August 9, 2018. Snyder testified that claimant was a part-time associate throughout his employment. He had limited availability, which affected the number of hours the employer could give him. Claimant's job offer clearly states that his schedule and number of hours would be determined by his availability and the needs of the business.

Claimant separated from employment in March 2019. This separation has not yet been the subject of a fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not partially unemployed. Therefore, benefits are denied.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a

reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into a part-time position. He has worked part-time hours during her entire employment. The testimony in the record indicates claimant's hours have fluctuated based on his availability and the business's needs. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has he had any weeks of total unemployment, the issues of his availability for work and the chargeability of the employer's account are moot at this time.

The issue of claimant's separation will be remanded for further investigation.

DECISION:

The February 22, 2019, (reference 03) unemployment insurance decision is reversed. Claimant is not partially unemployed. The issues of his availability for work and the chargeability of the employer's account are moot at this time.

REMAND:

The issue of whether claimant's separation is disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn